No. 532. 225

Br. of Spalding for Appellee

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Filed May 1, 1901.

# Supreme Court of the United States.

OCTOBER TERM, 1900.

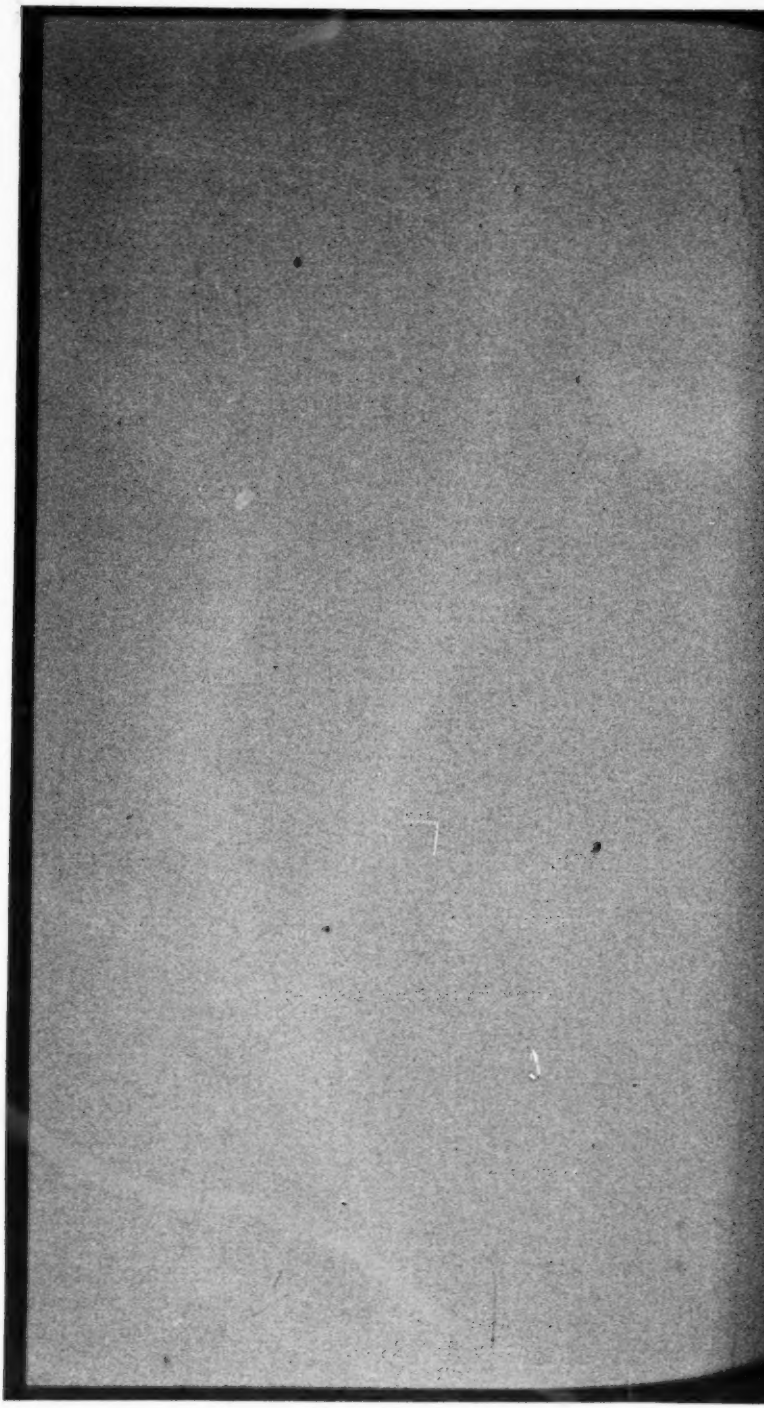
THE UNITED STATES, *Appellants*,
*v.*
WILLIAM T. EWING, *Appellee*. } No. 532.

Appeal from the Court of Claims.

## BRIEF OF ARGUMENT ON BEHALF OF APPELLEE.

HARVEY SPALDING,
*Attorney for Appellee.*

BYRON S. ADAMS, PRINTER.



# Supreme Court of the United States.

OCTOBER TERM, 1900.

No. 532.

THE UNITED STATES, APPELLANT,

vs.

WM. T. EWING.

APPEAL FROM THE COURT OF CLAIMS.

## BRIEF OF ARGUMENT FOR CLAIMANT.

### STATEMENT.

In 1888 suit was brought in the Court of Claims to recover under the act of 1883 (Chapter 119), the claimant's salary by commissions on the basis of the act of 1854 as postmaster at Gadsden, Ala., in each of his biennial terms of service between July 1, 1866 and July 1, 1874, less the amount of salary adjusted and paid under the salary act of 1864 for each of said terms, each of said adjustments having been made at the beginning of each of said terms prospectively, not upon the returns of the term for which the salary was afterwards paid, but upon conjectural estimates, made by the Postmaster-General in advance of the receipt of the returns.

Before suit was brought, the claimant made a continuous effort from 1883 to 1888 to prevail on the Postmaster-General to report for payment the amount of his said salary by commissions less the amount of his paid conjectural salary for each of said four biennial terms of service. All his efforts were unavailing.

On August 4, 1886, at the request of the Postmaster-General, Congress by statute barred all like claims not presented to the Postmaster-General prior to January 1, 1887.

Many thousands of like claims from all over the United States were presented to the Postmaster-General prior to January 1, 1887, and as in this case, report of the salary by

commissions of each postmaster in each biennial term of service, less the conjectural salary paid, was denied by the Postmaster General.

There were consequently filed by State schedules in the Court of Claims 16,523 of like claims, seeking to recover from the United States debts due and payable, estimated in the aggregate to amount to $2,530,000.

As a result of a continuous struggle in the Court of Claims, on behalf of these thousands of claimants, backed by the statute which conferred jurisdiction on that Court in every such case, from 1888 to late in 1900, a period of more than twelve years, a report by the Postmaster-General in this one case to the Court of Claims, was effected of the amount of claimant's salary by commissions in each of said biennial terms of service, and the amount of conjectural salary paid him under the act of 1864, in each of said terms. That report is stated in detail at the bottom of page 16 of the record, and as stated in Finding III, on page 6 of the record, the total of the salaries of the claimant for the four terms by commissions, is $4,037.73, and the total of the conjectural salaries paid for the four terms, including an additional sum of $91.90 paid in 1884 on account of salary in the second term, and another sum of $95 paid in 1884 on account of salary in the third term, is $2,772.90 (see Finding II, page 6 of record). So that the excess of salaries by commissions in all the terms over the total salaries paid the claimant in all the terms is $1,264.83 (Finding III). This is the one and only case from amongst all the thousands of these claims in which the Postmaster-General has consented to report the readjusted salaries of the applicant postmasters.

Without a report of the readjusted salary account of a postmaster under the statute of 1883 by the Postmaster-General, no adjudication could be made by the Court of Claims under the statute giving that Court jurisdiction in such cases. The Postmaster-General for seventeen years has defeated the exercise of the plain rights of all these thousands of citizens of the United States, theoretically reputed to be sovereigns, to have a judicial determination of their contract property rights secured to them by the statute of 1883, by the Court of Claims.

As is publicly known, the statute of 1883 is the fruit of a controversy produced by the administration by the Postmaster-General of the Postmaster's Salary Act of 1864. It is the remedy granted by Congress for the wrongs suffered by the postmasters by the method of administration of the statute of 1864.

The wrongs complained of by postmasters which secured

the statute of 1883, were set forth, limited and described by postmasters and on their behalf continuously from 1866 to 1883, a period of seventeen years. During this period of seventeen years there was no executive officer of the Post Office Department charged with any duty of regulating the pay of postmasters, ignorant of the exact nature of the wrong complained of by postmasters.

When, at the request of the Postmaster General, Congress committed to him the duty of guessing what the receipts and actual earnings of postmasters would be for terms of two years in the future, predicating his guesses upon his knowledge of what the receipts and earnings of the postmasters at postoffices were for the period of two years before the guesses were made, Congress also committed to him the duty to repeat these guesses within the period of two years as that period progressed with sufficient frequency, so that in those cases of rapid increase or decrease in the receipts, there should be no ground on the part of the postmasters or on the part of the Government for complaint. Fully aware of this purpose of the statute of 1864, the Postmaster-General on March 1, 1866, published the following regulation:

> "Sec. 474. The salaries of postmasters are established upon the basis of ALL THE REVENUE of their post offices during the two years preceding the passage of the law—i. e., 1863 and 1864. Box rents are included in these revenues. Every postmaster receives in the form of salary as much compensation as he formerly received from commissions and box rents."
>
> "Sec. 475. Any postmaster may put up boxes in his office. These boxes are his private property, but the revenues thereof must be paid over to the Department. Under the system of salaries, the postmaster receives the benefit of these revenues as effectually as he could under the system of commissions and emoluments."
>
> "Sec. 476. Where the justice of the case demands, the Postmaster-General has the authority to readjust salaries oftener than once in two years, and under this provision of law, all inaccuracies and inadequate or excessive allowances of salary can be readily corrected; so that where there is an extraordinary increase or decrease in box rents within the two years, the salary may be readjusted so as to meet the requirements contemplated by the law."

And on June 12, 1866, Congress ordained that there should be a readjustment of the salary of every postmaster paid less

than $2,000 per year whenever his returns showed his paid salary to be ten per centum less than his salary by commissions would be. (Stat. 1866, Chapter 114, June 12, 14 Stat. 59, Sec. 8.)

When, in the thousands of cases in which the postal receipts were constantly increasing, these regulations and the statute of 1866 were ignored, and large portions of their earnings taken from the postmasters by the Postmaster-General, who was all-powerful, for the Auditor could not credit the postmaster with a dollar not embraced in the prior order of the Postmaster-General, the victims were conscious of the most inexcusable wrong ever inflicted by a Department policy systematically upon people wholly powerless to protect themselves. The complaints in every such case had to be addressed to the Postmaster-General, in whom resided supreme power and who had previously inaugurated the policy of ignoring his quoted regulations and the statute of 1866. This policy was perfectly illustrated by the victims who first wrote to the attorney of the postmasters upon this subject. Frank Danford, of Girard, Kansas, complained that he was appointed postmaster at that point on a railroad, and that a great amount of mail matter was delivered to him so that he had to hire an office and a clerk, and that under these circumstances, he was notified that his salary had been fixed at $12 per annum. Whereupon he promptly sent his resignation to the Postmaster-General, but he was made to pay out hundreds of dollars for clerk hire, office rent and expenses of handling the mail for nearly a year, for neither he nor his sureties could be relieved of responsibility until his successor was appointed and qualified. This case and those that followed aroused the indignation of the executive of the Post Office Department. Thereafter that executive watched for an opportunity to retaliate. Later this opportunity came. For the postmasters, the attorney had worked many years so that his outlay of money and labor represented a small fortune and the whole of this outlay was incurred on the faith of fee contracts with the postmasters. There are many who believe that such contracts would be absolutely worthless, and that no collection whatever on such contracts could be effected if the executive of the Department should send the warrants when issued to the claimants and instruct them to pay no fees, coupled with an implied charge of fraud against the attorney. There can be no question but that when this was done in the beginning of payments to postmasters in 1885, the absolute ruin of the attorney was contemplated and expected. This Departmental wrath and vengeance, in its various manifestations during thirty years, will

hardly be understood without a consideration of the method by which the policy of a great Department, after it has been definitely determined upon, is enforced, and the reasons which render the use of unlimited Departmental power to enforce the same when subsequently that policy is challenged as a violation of law, and of the property rights of the people.

Between 1864 and 1874, as earnings of postmasters guessed at in advance by the Postmaster-General, fixed in the form of salaries adjusted under the statute of 1864, there was paid to postmasters an aggregate of $46,000,000. Had not postal regulations sections 474, 475, and 476 herein quoted, and the statute of June 12, 1866, herein cited, been disregarded, postmasters would have been paid in the aggregate in that ten years $50,000,000 instead of $46,000,000. The controversy of seventeen years which secured the statute of 1883, took form and organization and succeeded under the control of the attorney. The sole basis of this controversy was the continuing charge that the executive of the Post Office Department had deliberately wronged postmasters out of several millions of dollars of their earnings. The then executive of the Department failed in an attempt to secure the veto of that act after its passage by both houses, this on the third day of March, 1883.

The executive of the Department was shocked by the enactment of this statute. But soon after its enactment, Postmaster-General Gresham came into office, and he formulated and published throughout the United States the declaration in substance, that the statute of 1883 was a contract made by Congress, to pay the deficiencies of ten per cent. or more, which might be found to exist in the conjectural salaries paid to postmasters upon a restatement of salaries of such postmasters upon the full returns of each biennial term of service, upon the basis of the statute of 1854. All the forms necessary to thus comply with and carry into effect the statute of 1883, were prepared by his orders (See Finding VI, of the record, page 9 to 13). This action by Postmaster-General Gresham was a complete, exact and full recognition of the rights of postmasters as claimed by them, except that in those few cases in which a new post office was established during a biennial term, General Gresham held that no account could be stated to effect the payment of the deficiency if any existed. General Gresham having made this record left office, and was succeeded by the exponent of the Department wrath and vengeance policy. The executive furnace seemed then to become very hot in the effort to destroy the statute of 1883, which was credited as the fruit produced by the work of the attorney. This effort to destroy the statute was an undertak-

ing surrounded with great difficulty for it could only be accomplished under color of carrying it into effect. To salute and stab to death this statute was the work then undertaken. How could forms ordered by General Gresham, upon which to state these plain contract accounts and his plain and explicit declaration of the nature of this contract, be used to defeat that plain contract?

OF THE SECRET DEPARTMENTAL MANIPULATION OF THE SALARY ACCOUNTS OF POSTMASTERS BY WHICH THE DEFEAT OF THE STATUTE OF 1883 WAS ATTEMPTED.

By the statute of 1854 (Chapter 61, June 22, 10 Stat. 298), and prior acts of Congress, it will be seen that it was never possible before 1864 to deprive any postmaster of any part of his earnings because the law gave him the whole of the box rents he collected, and a prescribed number of cents out of each dollar of postage he collected, and this by law he was authorized to retain out of the receipts of his office.

The controversy, born of the nullification by the Postmaster-General of postal regulations, sections 474, 475 and 476 of 1866, and of the statute of 1866, compelled in 1874 the return to the just methods of compensating postmasters in force prior to the salary act of 1864. The statute of 1883, Chapter 142, required all non-presidential postmasters as did the act of 1854 to be paid by commissions which they retained out of the postal receipts; and the pay of presidential postmasters was made absolute each year by the total office receipts the year prior. Thus before 1864 and after 1874, it was never possible to manipulate the pay accounts of postmasters so as to deprive them of a single dollar of their earnings. The guess work by the Postmaster-General, by which postmasters lost about $4,000,000 of their earnings, between 1864 and 1874, was under the statute of 1864 absolutely without remedy because the guesses were made by the Postmaster-General appointed by statute to do the guessing. In this he had exclusive jurisdiction. No Court and no other officer could lawfully guess about the salaries of postmasters while the statute of 1864 was in force. But no statute except that of 1864 ever authorized salaries of postmasters to be fixed by guess of any executive officer and that statute was repealed long before the statute of 1883 was enacted. The only method by which the guess of the Postmaster-General was under the act of 1864 lawful, was to guess as to what the salary should be for a term in the future at the date the guess was made.

Such a thing as a guess as to what a postmaster's salary should be for a past term of service was never heard of, for

the plain reason that in every instance the returns for the past term made absolutely certain what the salary of the postmaster should be. The statute of 1864, prohibited the naming of a salary for any postmaster for a past term, and ordered that no salary of a postmaster should be stated except for a term in the future. For this reason the statute of 1883 ordered that in certain cases of loss by naming salaries for future terms that the salary for such terms in the past should be restated. By this act the Postmaster-General was without power to do anything at all except to restate salary accounts of postmasters in certain cases for past terms of service, and to report the results of such restatement of salary accounts.

A restatement of a postmaster's salary account could not be made under the statute of 1883 without showing the precise amount of salary by commissions in the biennial term covered by the restatement, and with it the precise amount of conjectural salary stated and paid in that term under the act of 1864. This is demonstrated by the case before the Court. An account was stated in each of four biennial terms of service and each of the accounts stated made the precise amount of the claimant's salary by commissions to appear in that term, and also the exact amount of the conjectural salary under the statute of 1864, which was paid, appear, the exact deficiency of the paid salary contrasted with the salary by commissions in each term thus appearing. The Department animosity could be gratified only by the defeat of the payment of these acounts, which in the very nature of the case exhibited the exact amount due on each and every account stated in all the cases in which the conjectural salary paid was ten per cent. or more less than the salary by commissions under the statute of 1883, by resorting to some method or rule of manipulating the accounts by which it should be falsely shown that nothing was due on any such account. It is manifest that after stating any such accounts it would not be possible to avoid or decrease the credit of that account in any other way than by substituting for it a smaller credit as the true credit. The method by which $4,000,000 was lost to postmasters between 1864 and 1874, is described as follows: The Postmaster-General took the commissions on the smaller returns between 1864 and 1866, as a basis of fixing the salaries of postmasters on the larger returns between 1866 and 1868, and he took the smaller commissions of the postmasters on the smaller returns between 1866 and 1868, to fix the salaries of postmasters on the larger commissions between 1868 and 1870, and he took the smaller commissions on the small receipts between 1868 and 1870 to fix the salaries of postmasters upon the larger commissions between 1870 and 1872,

and he took the smaller commissions between 1870 and 1872 to fix the salaries of postmasters on the larger commissions between 1872 and 1874.

To defeat the payment of the whole of the alleged $4,000,000 of deficiencies in the pay of postmasters provided for by the act of 1883, it was only necessary for the Postmaster-General to restate the smaller salary on the smaller receipts of each of the biennial terms mentioned as the salary of the postmaster on the larger commissions and receipts of each succeeding biennial term. This was what was done. The smaller credit of one term was, by authority of the Postmaster-General, stated as the true credit in the term in which that true credit was much larger. He actually suppressed the true and larger credit and substituted therefor the smaller credit of a term prior. In this way it became feasible, in the absence of any conscience, to notify thousands of postmasters to whom debts were due and payable that nothing was due them. This was done.

The method of this substitution of small credits for large credits is shown on pages 14 and 15 of the record. At the top of page 14, there is an account stated exhibiting accurately the claimant's readjusted salary for the term between July 1, 1866 and July 1, 1868, on the receipts returned by the claimant for that term. The amount of that restated salary as stated is $531.90. Against this credit of $531.90 there is fraudulently charged $440, which is the amount of salary originally paid the claimant not between July 1, 1866 and July 1, 1868, but between July 1, 1868 and July 1, 1870, thus showing a sum of $91.90 due the claimant, whereas there is actually due him in the term between July 1, 1866 and July 1, 1868, $531.90 less $146, the true amount due being $385.90 and not $91.90. This manipulation of the claimant's restated salary account is fraudulently stated to be not a readjustment of his salary between July 1, 1866 and July 1, 1868, but a readjustment of his salary between July 1, 1868 and July 1, 1870.

At the bottom of page 14 there is a readjustment of the claimant's salary on his returns between July 1, 1868 and July 1, 1870, stated at $1,015, against which is fraudulently charged not the salary of $440 paid him for that term under the act of 1864, but the sum of $920, paid him not between July 1, 1868 and July 1, 1870, but between July 1, 1870, and July 1, 1872, so that it falsely appeared that a credit in addition to the former salary paid existed of only $95, whereas the true credit in that account is $1,015 less $440, amounting to $575. This manipulation of this account is falsely stated to be not a readjustment of the claimant's salary between July 1, 1868

and July 1, 1870, but a readjustment of his salary between July 1, 1870 and July 1, 1872.

On top of page 15 there is a readjustment of the Claimant's salary on his returns between July 1, 1870 and July 1, 1872, of $1,179.67, against which is falsely charged the salary of $1,080 paid him between July 1, 1872 and July 1, 1874, so that it is falsely made to appear in this account that nothing is due the claimant whereas there is due him $1,179.67 less $920, the amount of salary paid him in the term between July 1, 1870 and July 1, 1872, under the act of 1864. This account is also falsely stated to be the readjustment of the claimant's salary between July 1, 1872 and July 1, 1874, whereas it is a readjustment of his salary between July 1, 1870 and July 1, 1872. These illustrations show the method by which the executive of the Post Office Department perverted the forms prepared under General Gresham's orders to carry the statute of 1883 into effect to defeat compliance with that statute, and the accounts show exactly the method by which the executive manipulated the same to defeat General Gresham's orders in which he always specifically declared to the public the statute of 1883 to be a contract to pay the difference in each biennial term of service between what was paid the postmaster and what he would have received as commissions under the act of 1854.

This systematic manipulation of many thousands of salary accounts of postmasters accomplished a fraud upon the law of dimensions probably never before reached in any kindred transaction in any executive department. The executive named this transaction a prospective readjustment of salaries of postmasters and affirmed that it was done by authority of a construction of the statute of 1883 by the Attorney-General, by the Postmaster-General, and by the Supreme Court of the United States. This method of manipulation of the salary accounts, if confined to the many thousands of cases in which the postal revenues increased from term to term, thus creating deficiencies in the guessed at salaries, under the act of 1864, would have produced no payment unless by mere chance or accident. If there had not been conditions as to the amount of postal revenues returned as compared with the guessed at salaries under the act of 1864, the reverse of the conditions at those offices constantly increasing in receipts, the Department by this manipulation would have been enabled to report complete blank results of the statute of 1883. In other words, the Department could in such case have reported nothing due any postmaster in the United States under that statute.

The following illustrations show the method by which pay-

ment of all the debts due and payable under the statute of 1883, was defeated:

| | Terms of Service. | | | | |
|---|---|---|---|---|---|
| | 1864 to 66 | 1866 to 68 | 1868 to 70 | 1870 to 72 | 1872 to 74 |
| Salary by Comms..... | $200. | $400. | $800. | $1,600. | $3,200. |
| Guessed at salary..... | 100. | 200. | 400. | 800. | 1,600. |
| Deficiency..... | $100. | $200. | $400. | $800. | $1,600. |

The Postmaster-General first had all these accounts showing the salary by commissions in each term stated and then proceeded as follows:

He ignored the deficiency in the first term and defeated the payment of the deficiency in the second term by substituting the commissions in the first term of $200 for the $400 in that term. In the third term he defeated the payment of the $400 deficiency by substituting for the $800 commissions in that term the $400 commissions in the second term. In the fourth term he defeated the payment of the $800 deficiency by substituting for the $1,600 salary by commissions in that term the $800 salary by commissions in the third term. He defeated the payment of the deficiency of $1,600 in the fifth term by substituting for the $3,200 salary by commissions in that term the $1,600 salary by commissions in the fourth term.

The case before the Court is also a complete illustration of an attempt to guess out of existence debts due postmasters under the act of 1883 by suppressing the stated accounts by which the debts due and payable are evidenced.

But in this undertaking the executive of the Department became worried and burdened by an enormous load. The maniplation of accounts by which the stated credit on the returns of one term was substituted for the stated credits on the returns of the succeeding term produced results which were probably not looked for at the beginning of the enterprise. These results occurred because there were many thousands of post offices where the postal revenues decreased from term to term as to which the Postmaster-General had originally approximately complied with the regulations by which the guessed at salary was reduced from time to time so as to conform approximately to the commissions on the decreased receipts. By this adopted manipulation all the postmasters at these offices decreasing in receipts were awarded, while the manipulation was progressing gratuities.

In the beginning this work was entered upon with courage

and cheer because it was supposed that it would defeat the payment of most or all of the $4,000,000 debt. As time wore on the burden of paying thousands of gratuities became very great and in the midst of reporting these gratuities for payment the clerk in charge stopped and laid away thousands of these fictitious accounts without payment.

The gross disregard of law in this work is illustrated by the following cited cases of payments of bounties.

The postmaster at Litchfield, Ill., for his services between 1872 and 1874 was paid a bonus of $1,183.32. His total commissions being $3,600 and the salary paid him under the act of 1864 being $3,400, to which was added the said sum of $1,183.32. (See H. Ex. Doc. 153, 48th Cong. 2d Session, P. 105.) The postmaster at Mound City, Ill., whose commissions for the term between 1866 and 1868 were $1,466.44, and who was paid under the act of 1864 $2,000 was paid a bonus of $1,192.42 in addition to the original over-payment. (H. Ex. Doc. 32, 50th Cong. 1st Session, P. 21.) The Postmaster at Bowling Green, Ky., whose original commissions between 1866 and 1868 amounted to $3,400, and whose pay under the act of 1864 was $3,200 was paid a bonus of $1,088.76 for that term. (H. Ex. Doc. 31, 50th Cong. 1st Session, P. 14.) The postmasters at Havre de Grace, Md., whose commissions between 1866 and 1868 amounted to $1,733, and whose original pay, act of 1864, was $1,800, received a bounty of $6,022.10. (H. Ex. Doc. 153, 48th Con. 2d Session, P. 126). The postmaster at Springfield, Mo., whose commissions between 1866 and 1868amounted to $3,600,and whose pay,act of 1864,was $3,800 received a bonus of $2,214.29. (H. Ex. 31, 50th Con., 1st Session, P. 60.) The postmaster at Old Point Comfort, Va., whose commissions between 1866 and 1868 amounted to $2,060, and who was paid under the act of 1864, $1,733, received a bonus of $2,790.17. (S. Ex. Doc. 253, 50th Cong., 1st Session, P. 21.) The postmaster at New Creek, W. Va., whose commissions between 1866 and 1868 amounted to $628, and who was paid under the act of 1864, $640, received a bonus of $2,014.42. (H. Ex. Doc. 225, 49th Cong. 1st Session, P. 89.) The postmaster at Harpers Ferry, W. Va., whose commissions between 1866 and 1868 were $1,280, and who was paid under the act of 1864, $1,480, received a bonus of $5,246.48. (S. Ex. Doc. 253, 50th Cong., 1st Session, P. 21.)

In the foregoing eight cited cases gratuities were paid by the Postmaster-General by substituting the commission accounts between 1864 and 1866, for the commission accounts between 1866 and 1868, aggregating $21,751. 96.

From the date General Gresham left office and was succeeded by the exponent of Department wrath the work of

publishing throughout the country the statute of 1883, to be a contract to pay the deficiencies of ten per cent. or more found to exist in the guessed at salaries of postmasters, went on, while notices to those who had lost more than 10 per cent. of their earnings by the guessed at salaries were systematically sent to the victims stating that it had been found that nothing was due them. Statements of accounts by commissions also proceeded upon decreased receipts showing full or over-p ments by guessed at salaries, act of 1864, and notices were sent to those postmasters who returned decreased receipts and were originally paid in full that additional salaries were due them, the amounts reported as due being the excess of the commissions of the prior terms over the salaries paid in full on decreased receipts in the succeeding term. This went on from 1884-5 to 1888-9, in the face of unnumbered protests and remonstrances, and until the strangest Departmental transaction that ever occurred wore itself out. This condition of wrath in the Department, out of which this action described was born, seems to have originated by the exercise of supreme power under the act of 1864 as to the pay of postmasters. This statute was secured by representations that the same pay secured to postmasters by the statute of 1854 would be continued to postmasters under the act of 1864. Following this the Postmaster-General was enabled under the statute of 1864 to exercise supreme power because the postmasters were powerless to retain any compensation except what was dictated by the Postmaster-General. It was in this way and by the exercise of this power that the Postmaster-General transferred of the actual earnings of postmasters between 1864 and 1874 to the credit of his administration of the law about $4,000,000. Since that time every effort on behalf of the postmasters to reclaim their lost earnings has been met by Department wrath. It was never possible to reclaim the fund without legislation which should take away from the Postmaster-General the entire power exercised by him under the statute of 1864, so as to enable the postmasters who served between 1864 and 1874, before the law to stand on the same footing that postmasters always stood on as to their pay before 1864 and have always stood on since 1874. The act of 1883 took away from the Postmaster-General every vestige of power over the compensation of postmasters under the form of guess work or estimate of their pay. By the statute of 1883 the vice of the statute of 1864 wholly disappeared. No one knew this fact better than did the Postmaster-General himself, for on the 9th of June, 1883, and on February 17, 1884, and by circulars issued continually thereafter, he declared to the people the statute of 1883 to be a contract requiring ac-

counts to be stated of the deficiencies in the pay of postmasters described in the statute and to be paid. When he made these declarations he knew perfectly that in every such case the registered returns of every postmaster would show by a simple statement of accounts thereon the exact amount of the deficiency in the salary required to be paid by the contract of 1883, and that there could be no deviation or variance whatever as to the result in the statement of any such accounts.

And yet no one of these accounts has ever been paid. There has never been any means, however, to prevent payment, but by concalment of the accounts and the substitution of the accounts stated in one term for the accounts stated in another term and this substitution was only possible by keeping the whole transaction under cover.

These are grave statements concerning the action of officers in a great Department and they would not be made except for the reason that a law of Congress has been in this way set at defiance and the record truths of the whole transaction are in the Post Office Department.

The method of substituting accounts in one term for the accounts in the next term will be found stated by the Postmaster-General, himself, in his own words. In a letter of Postmaster-General Don M. Dickinson, dated September 12, 1888, and addressed to Hon. F. M. Cockrell, U. S. S., and printed as part of Senate report No. 2410, 50th Cong., 2d Session, will be found the following statement:

"The Attorney-General's interpretation was to the same effect, viz.: That the readjustments were to be made *prospectively* for two years and by *biennial periods*, as required by the act of 1864, and that the same were not to be made so as to allow postmasters for a given quarter or period the difference between commissions on the 1854 basis for that quarter or period when it would amount to 10 per cent. more than the salary received for that period. The salary for a given two years was to be determined by examination of the compensations and receipts of the business for the *preceeding two years*, and comparing the same with a commission for that preceeding biennial period."

(See page 4 of said report.)

The following statements of Postmaster-General Dickinson are on the bottom of page 6, and the top of page 7 of the same report:

"The law (acts of 1866 and 1883), as construed and administered made the method of readjustment thus, for example: In fixing the salary of a postmaster for two years, beginning July 1, 1870, the Department examined the returns rendered

from July 1, 1868 and July 1, 1870. On these commissions were computed. If the commissions on the basis of 1854 had been the basis of fixing the salary for 1870 to 1872 and would have given the postmaster 10 per cent. more than he actually received, then the postmaster who happened to be holding from 1870 to 1872 was paid the difference. * * *

"Instead of comparing the commissions which would result from the 1854 law, between 1868 and 1870, with the salary paid from 1870 to 1872, it is proposed to compare them with the salary paid between 1868 and 1870. This is, as I have endeavored to make plain, a radical departure from the law as it has been administered.

"In this connection, I beg you to examine the opinion of the Attorney-General, the much more concise letter of the Postmaster-General, and the decision of the Supreme Court reported in 124 U. S. reports, p. 86. The opinion of the Attorney-General and letter of the Postmaster-General are given at length in the transcript of record of case of McLean *vs.* Vilas, herewith submitted to you.

"Very respectfully,

"DON M. DICKINSON,

"Postmaster-General.

"Hon. F. M. Cockrell, U. S. Senate."

Then follows in full inclosed in Mr. Dickinson's letter the letter of the Postmaster-General dated June 9, 1883, addressed to Hon. Frank Hatton, First Assistant Postmaster General, which letter appears in full in the record of this case on pages 9, 10, and 11.

It should be noted, perhaps, in connection with this letter of Postmaster-General Dickinson that in it he states that 68,725 of these claims have been reviewed and his letter shows that in every review made an account was stated of the commissions for a biennial term on the basis of the act of 1854.

Thus the words used by the Postmaster-General in his letter of September 12,1888, show first that the payment of every and all deficiencies of 10 per cent. or more in the salaries of postmasters between 1864 and 1866 were denied. Second that the payment of all increases in the commissions of postmasters of 10 per cent. or more between July 1, 1866 and July 1, 1868, over the commissions at the same offices between 1864 and 1866 were denied. Third, that payment of all increases in the commissions of postmasters between July 1, 1868 and July 1, 1870 over the commissions at the same offices between July 1, 1866 and July 1, 1868 were denied. Fourth, that payment of all increases in the commissions of postmasters between July 1, 1870 and July 1, 1872 over the commissions at

the same offices between July 1, 1868 and July 1, 1870 were denied. Fifth, that payment of all increases of commissions of postmasters between July 1, 1872 and July 1, 1874 over the commissions at the same offices between July 1, 1870 and July 1, 1872 were denied. In other words, this statement of the Postmaster-General is equivalent to the specific statement that of an aggregate of several millions dollars deficiencies in the payment of postmasters in the five biennial terms mentioned no part of the same has been paid.

Sixth, that in all cases in which the receipts of postmasters between July 1, 1866 and July 1, 1868, decreased 10 per cent. or more, when compared with the receipts at the same offices between July 1, 1864 and July 1, 1866, as to which the Postmaster-General fixed the salaries of postmasters between July 1, 1866 and July 1, 1868, complying with the postal regulations not to exceed the reduced commissions for that biennial term, the Postmaster-General awarded to all such postmasters gratuities so as to increase their salaries above the commissions between 1866 and 1868 so as to equal the larger commissions on the larger receipts between July 1, 1864 and July 1, 1866.

Seventh, that in all cases in which the receipts at post offices between July 1, 1868 and July 1, 1870, decreased ten per cent. or more when compared with the receipts at the same offices between July 1, 1866 and July 1, 1868, as to which the Postmaster-General complying with the regulations made the salaries between 1868 and 1870 not to exceed the commissions the Postmaster-General claiming to comply with the act of 1883, increased the salaries of such postmasters by giving them gratuities so as to make the total salaries paid upon the decreased receipts equal to the larger receipts between July 1, 1866 and July 1, 1868.

Eighth. The Postmaster-General claiming to comply with the act of 1883, paid all the postmasters whose business decreased ten per cent. or more between July 1, 1870 and July 1, 1872, bonuses so as to make their salaries exceed the commissions on the smaller receipts at their offices and equal the larger commissions on the larger receipts at the same offices between July 1, 1868 and July 1, 1870.

Ninth. That the Postmaster-General at post offices decreasing in receipts ten per cent. or more between July 1, 1872 and July 1, 1874, paid the postmasters at such offices bonuses so as to make their salaries exceed the salaries by commissions and equal the larger commissions on the larger receipts at the same offices between July 1, 1870 and July 1, 1872.

Thus the Postmaster-General, speaking for himself, declared in 1888 that he had denied payment of deficiencies in

the salaries of postmasters throughout the United States under color of the statute of 1883, and that in lieu thereof, he had paid throughout the United States gratuities to other postmasters for the sole reason that from term to term the receipts of their offices decreased. And the sole reason for denying payment of deficiencies to other postmasters throughout the United States assigned by the Postmaster-General was because the receipts and commissions at their offices increased from term to term.

And the Postmaster-General cites as authority for this payment of gratuities and denial of payment of deficiencies, the decision of this Court in 124 U. S., page 86, and he also cites the construction of the law by Postmaster-General Gresham, dated June 9, 1883, which formed part of the record in the MeLean case in this court, as authority for denying payment of deficiencies and substituting the payment of gratuities. This he does in face of the explicit declaration of Postmaster-General Gresham, made in the following words:

"If, in fact, there are cases in which it appeared from the quarterly returns or from sworn reports of receipts and business that postmasters of the third, fourth, and fifth class at the biennial readjustment had their salaries fixed under the act of 1864, when, by an adjustment under the act of 1854, ten per cent. or more would have been added to their salaries, then under the act of 1883 such postmasters are entitled to whatever additional sum they would and should have received under the act of 1854."

These words of General Gresham could be complied with, in view of his denial of readjustments under the act of 1883, with greater frequency than for a whole biennial term, only by stating an account for a whole biennial term retrospectively on the basis of the act of 1854. In fact, the act of 1854 permits only the statement of a salary account of a postmaster retrospectively.

The Postmaster-General in citing the authority of this Court for paying bounties instead of deficiencies to postmasters seems to ignore wholly the decision of this Court in in the case of McLean, 124 U. S., page 86, to the effect as follows, viz.:

"Acting upon this suggestion, and under the act of Congress of March 3, 1883, which authorized and directed the Postmaster-General, in proper cases, to make readjustments of salaries, which should act retrospectively, McLean made a demand, etc."

When in this decision the Supreme Court decided that no readjustment of postmaster's salaries was authorized by the act of 1883 with greater frequency than once in two years, it

was determined absolutely by this Court that the statute of 1883, in proper cases, which proper cases were only those in which all the returns for a full biennial term showed that the paid salary was ten per cent. or more less than the salary by commissions, that every salary account should, under the act of 1883, be restated retrospectively in all the cases where the deficiency described existed.

The determination of the Postmaster-General to pay bounties to postmasters and to deny payment of deficiencies to other postmasters brought unnumbered protests from all parts of the country.

These protests are illustrated by the following protest, dated June 1, 1885, and addressed to Postmaster-General Vilas:

"Washington, D. C., June 1, 1885.

"Hon. W. F. Vilas, Postmaster-General.

"Sir: Referring to your resolve to adhere to the method of adjustment of postmasters' salaries now in progress in the Department, although there are many communications of mine on file showing the same facts and results, I desire to call your personal attention to the following statement:

"The method of adjustment now in progress is a review of biennial adjustments under the Original Act of July 1, 1864 (long since repealed),and is therefore wholly without warrant of law.

"The readjustments denied payment are those provided for in the Act of March 3, 1883, and such denial is in manifest disregard of existing law.

"Adjustments of salaries without warrant of law involve the payment, by the acts of the Postmaster-General, of money out of the Treasury without warrant of law, while denying payment of money to claimants, which the law commands to be done.

"The method of adjustment now in progress, if carried on to completion, will involve the payment, without warrant of law, of about $2,000,000, and leave the law in full force, which requires the payment to certain postmasters of the difference between the salary allowed and the commissions, where such difference amounts to ten per cent.

"The figures showing these results, when completed, will necessarily go before Congress and the country.

"I cite two cases by way of illustration, and all the adjustments made and paid are also referred to in verification. Congress and the people are as yet deceived, and the truth is only known to the extent that I have been able to make it known.

"J. K. McLean served as Postmaster at Florence, Kansas, from July 1, 1871, to July 1, 1872, and the commissions

amounted to $560; and the pay allowed was $7, being an
cess of commissions over pay of $553. The rule now follow
has been applied to his case, and denies him any allowa
whatever.

"Mr. W. T. Mackinson was postmaster at Lapidum, Ma
land, from July 1, 1866, to July 1, 1868, and his commissi
amounted to $154; and the pay allowed was $166, or $12
excess of commissions.

"The rule now being followed, which the newspapers
is to be adhered to, has been applied to Mr. Mackinson's ca
and he has been allowed and paid, *in addition* to the $
formerly allowed, $688.38.

"I present this letter as the last of my protests against t
course of action, and leave the responsibility for same who
with you.

"Respectfully,

"HARVEY SPALDING,

"Attorney for Certain Postmasters and Late Postmast
claiming under Act of March 3, 1883."

The executive of the Post Office Department was by th
protests profoundly impressed with the enormous respo
bility incurred by denying the report and payment of
debts due postmasters, fixed and defined in the statute
1883, and by paying out of the Treasury on his responsibil
millions of dollars of gratuities. Manifestly every accou
stated showing a deficiency in the pay of the postmas
would be paid as a matter of course if reported, and ev
proposition to pay a bounty would be denied if the bou
account had been reported. So it was that both classes
accounts were kept under cover, the executive of the P
Office Department withholding all these accounts from C
gress, used his personal influence as the head of the P
Office Department to secure legislation to relieve him of
sponsibility for the payment of bounties and for the den
of the payment of deficiencies in the salaries of postmaste

The following executive document of the House of Repres
tatives, Report No. 2376, part –, 49th Cong., 1st Sessi
illustrates this action of the executive:

49TH CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REP'T 2376, Part 2.

## SALARIES OF POSTMASTERS.

MAY 18, 1886.—Referred to the House Calendar and ordered to be printed.

Mr. BINGHAM, from the Committee on the Post-Office and Post Roads, submitted the following

## VIEWS OF THE MINORITY:

[To accompany bill H. R. 6993.]

For a better understanding of the legislation proposed, the bill, as reported by the majority, is herewith made a part of this report:

A BILL amendatory of the act approved March third, eighteen hundred and eighty-three, entitled "An act authorizing and directing the Postmaster-General to readjust the salaries of certain postmasters in accordance with the provisions of section eight of the act of June twelfth, eighteen hundred and sixty-six," and confirmatory of the action of the Post-Office Department thereunder.

*Be it enacted by the Senate and House of Representatives of the United States in Congress assembled*, That the readjustments of the salaries of postmasters heretofore made by the Postmaster-General pursuant to the act approved March third, eighteen hundred and eighty-three, entitled "An act authorizing the Postmaster-General to readjust the salaries of certain postmasters in accordance with the provisions of section eight of the act of June twelfth, eighteen hundred and sixty-six," as said act was construed by the Attorney-General, are hereby in all respects ratified and confirmed as a compliance with the requirements of said act. All claims of postmasters or late postmasters which have been disallowed pursuant to such construction, or are thereby precluded from allowance, are hereby declared properly disallowed and barred. All claims hereafter considered shall be readjusted in accordance with said act so construed; and no claim shall be considered which is not presented *on or before January first, eighteen hundred and eighty-seven.* No action or proceeding shall be had or maintained in any court against any Postmaster-General by reason of his action in reviewing and allowing or disallowing any application in accordance with said construction under said act.

The merits or demerits of this measure are to be determined mainly by prior and existing statutes upon the same subject. If the legislation proposed is in exact accordance with the laws, then it is in accord with the vested rights of the postmasters and the rights of the United States, and is therefore superfluous and useless legislation. If it is in conflict with an existing statute, it is in conflict with the vested rights of postmasters and the rights of the United States.

It appears that since the organization of the Post Office Department the pay of postmasters at minor offices has been measured by commissions upon the actual receipts, with the exception of that period between July 1, 1864, and July 1, 1874. On the 1st of July, 1864, the Department obtained the sanction of Congress to a system of salaries. (14 Statutes, page 335.) It was understood that the pay of postmasters was not to be diminished by this system, but that postmasters

were to receive substantially the same compensation after that date in the form of salaries that they received before that date in the form of commissions. This assurance had in fact the solemnity of law, in the form of regulation, section 475, which was as follows:

"Under the system of salaries, the postmaster receives the benefit of those revenues as effectually as he could under the system of commissions and emoluments."

In order that this might be done, Congress, by the second section of the Act of July 1, 1864, gave authority to the Postmaster-General to readjust the salaries of postmasters every three months, and the Postmaster-General pledged himself by this regulation to maintain the salaries of postmasters, in cases of increase of business, on the basis of commissions. In violation of this authority and this assurance, the Department inaugurated a system of arbitrary prospective salaries for terms of two years, no matter how great and how rapid the increase of business. After the first adjustments of 1864, these prospective salaries were never fixed upon the basis of the commissions for the two years prior to the readjustment, as required by the second section of the Act of July 1, 1864. They were sometimes fixed on one quarter's business, sometimes on two quarters, and sometimes dictated without reference to the business. Congress was flooded with complaints upon the subject at the First Session of the Thirty-Ninth Congress. As to the nature and number of these complaints, see Book 70, page 1661, of the Proceedings of Congress. The sole ground of these complaints was that the prospectively-adjusted salaries afforded compensation in cases of increase of business much less than the commissions exhibited by the returns. To remedy this wrong Congress passed the Act of June 12, 1866. (14 Statutes, page 60, section 8.)

Notwithstanding this statute, great numbers of complaints were made, that the readjustments of salaries it provided for, with few exceptional cases, were not made, and that the arbitrary system of prospective adjustments was adhered to without the application of the remedy contained in the act of 1866, to remove the wrongs incident to the prospective system. The aggrieved parties sought to recover the compensation of which they were deprived by suits in the "Court of Claims." They failed in this, the "Supreme Court" having decided in McLean's case (95 U. S., page 750), that they could not sue therefor until the Postmaster-General's readjustment should be made. Thereupon these people exhibited to Congress the injustice they suffered by non-compliance with the law entitling them to a readjustment of salary, where, by the pros-

pective adjustment, the salary allowed was much less than the commissions. As a remedy for these wrongs, Congress, on the 3d of March, 1883 (22 Statutes, page 487), ordered a readjustment of salary to be made in every such case. The wrong complained of before the passage of the Act of 1866, and after the passage of that Act, and which was the sole reason for the passage of the Act of 1883, was always set forth in terms such as cannot be misunderstood, namely, that by a prospective adjustment of salary, the complaining postmasters had received salaries in amount much less than the commissions. There is no such thing, therefore, as a misunderstanding as to the nature of the wrongs the Acts of 1866 and 1883 were intended to remedy. Such wrongs are, in fact, described in unmistakable language in the body of each statute; and the order contained in each statute, to remedy such wrongs by a readjustment of salary in each case, is absolute. There can be no readjustment of salary under a statute ordering such readjustment, because the salary allowed is ten per cent., or more, less than commissions, except on the basis of commissions. Every application which has been presented to the Postmaster-General, in compliance with the terms of the Act of March 3, 1883, for the readjustment of the salary of the postmasters named, by operation of law creates a vested right to the readjustment applied for, if the Department records show that the salary allowed is ten per cent., or more, less than commissions. Upon the subject of the construction of this law General Gresham, on the 16th of February, 1884, published to the country the following syllabus, namely: "That in all cases in which it appears from the biennial readjustment of the salaries of postmasters of the third, fourth or fifth class that they received ten per cent., or more, less than they would have received in commissions under the Act of 1854, they are entitled, under the Act of March 3, 1883, to the difference between what was paid them and what they would have received as commissions under the Act of 1854. * * * It follows that a claimant under the Act of March 3, 1883, must show that the Acts subsequent to 1854 deprived him of ten per cent., or more, of what he would have received if those statutes had not been enacted and he had been compensated on the basis of the Act of 1854." * * *

This was made, by the publication of circular No. 1223, the official Department construction of the Act, in language as follows:

"The Act embraces such claims as postmasters or late postmasters may have for review of their salaries * * * wherein it shall appear that the salary allowed was ten per centum less than it would have been upon the basis of commissions

under the Act of 1854. Briefly stated, the period covered by the Act of March 3, 1883, dates from July 1, 1864 to July 1, 1874, and the review will be made * * * on returns for eight quarters immediately preceding the biennial adjustment."

In view of the manifest intent of the statute and of the official construction by the Department, which are in entire harmony, it is interesting to examine the propositions contained in this bill. The first proposition is to *ratify* and *confirm* the readjustments of salaries of postmasters heretofore made by the Postmaster-General. The second proposition is to declare all claims of postmasters or late postmasters which have been disallowed, or precluded from allowance, properly disallowed and barred. The third proposition is to *authorize* that readjustments shall be continued in accordance with some construction the character of which is not stated. The fourth proposition is that no actions shall be maintained against the Postmaster-General, by reason of his action in *allowing* and *disallowing* any application.

The first proposition contains an admission that the Department has committed acts not warranted by law. If such acts have been committed, the vested rights of the people have been violated and the rights of the United States have been violated. To attempt thus to ratify acts in violation of vested rights as proposed, is to ask Congress, by an *ex-post-facto* statute, to rob the people of vested rights. If the rights of the United States have been violated, the case presented is that of an Executive Department seeking immunity from Congress for violating the laws of the United States.

The second proposition is that Congress shall by statute declare that the claims of postmasters which may have been disallowed in violation of their vested rights and in violation of a statute recently enacted was the proper performance of a supreme duty on the part of an Executive officer.

Who knows the full import of the third proposition, which proposes to *authorize* a continuance of the sort of readjustments which have been adopted? The solid and only basis of readjustments of postmasters' salaries authorized by law is the basis of actual commissions. This is a proposition to authorize readjustments to be made, not upon the basis of the statute, but upon some other basis; and that other basis, whatever it may be, is not only undefined by any statute, or by any order, or by any regulation, but it must necessarily be in violation of the rule defined by the statute and of the published orders construing the statute; for otherwise there is no necessity for appealing to Congress for this authority. Suppose this authority be granted, and afterwards Congress ascertains that upon some notion adopted in the Department as

to the meaning of an opinion which was so framed, perhaps, as to mean one thing or another thing or nothing, a great fund shall have been wrongfully taken from the Treasury by this tortuous and seemingly sinister method. If the law be departed from, manifestly the adoption of another and different rule is likely to lead to injustice against the United States. The action proposed herein is manifestly of the most dangerous character. The only safe rule is the rule of the law; and the Department has authority already, and is enjoined to execute and comply with this one rule of the law.

The fourth proposition is to grant immunity to the Postmaster-General for violation of vested rights by the disallowance of postmasters' claims; and coupled with this is the singular proposition to grant immunity to the Postmaster-General for *allowing* applications. Who is to sue the Postmaster-General for making allowance to postmasters? Certainly not the beneficiaries. Who has authority to ask Congress to grant immunity to the Postmaster-General for making allowances to postmasters? Taking the whole bill together it seems to be collection of remarkable propositions. It is impossible that the Postmaster-General, in the faithful performance of his supreme ministerial duties, can have need of such relief as is proposed in this measure. We are bound to believe that he has been guilty of no unlawful act; that he has violated the vested rights of no postmaster; that he has disallowed no claim which he is required by law to allow; that he has allowed no claim in violation of the rights of the United States which he is not by law authorized to allow; and that he has adopted no rule of adjustment of salaries other than the one rule prescribed by law. And if he is not guilty of all these acts, which cannot be attributed to him, there is no ground for urging the passage of this measure.

Reference being had to the second section of chapter 116, laws of 1883 (22 Statutes, page 484), it appears that Congress has provided for the judicial determination of every troublesome question of law arising in any Department. This statute is for the purpose of relieving the head of any Department in any such case of all responsibility, and at the same time obtain a settlement of every such question binding on the country and entitled to the respect of the whole people. Congress is not permitted to assume that the Postmaster-General has had before him any difficult question of law to pass upon, upon this subject, which he has refused to submit under this provision of law to a satisfactory judicial decision. In view of this statute, who has a right to say that the Postmaster-General has *disallowed* and *allowed* claims in such doubtful manner that he requires for protection the passage of this bill,

or that his action for or against postmasters and for or against the United States has been by such a doubtful rule that protection must be afforded him by this measure on account of such doubtful acts?

In the opinion of the minority, there appears to be no ground whatever upon which the passage of this bill can be advocated. If the Postmaster-General has in any degree violated the rights of postmasters, such violation of rights cannot be cured by act of Congress. He is answerable for such violation of rights to the aggrieved parties. If he has violated the rights of the United States, he might perhaps be forgiven by statute. If there has been hitherto, or if there be now, any doubt about the construction of the Act of March 3, 1883, the Postmaster-General owes it to himself, to Congress and to the people to obtain from the Court of Claims a judicial decision of such doubtful questions.

If the theory of the construction of the Act of March 3, 1883, presented in the majority report be the true construction of the Act, then there is no ground whatever upon which to ask legislation. Consequently in urging the passage of this bill, the majority, in effect, admit that the theory presented is fallacious. That it is so, upon examination, will appear manifest. The Act of June 12, 1866, was passed before the time for the first biennial readjustment under the Act of July 1, 1864, arrived. The departure from the strict rule of that Act, requiring the prospective biennial adjustments to be made on the basis of commissions of the two years prior, by making such adjustments on one or two quarters, did not occur till after the passage of the Act of June 12, 1866, so that that Act could by no possibility have had any reference to deviation from the rule of prospective adjustments. The Act of 1866 had for its only possible purpose the rectification of the wrong resulting from prospective adjustment of salaries in cases of increase of receipts, after the prospective adjustment was made. The whole theory is based upon the manifestly untenable ground that, from the fact that the Act of June 12, 1866, was enacted as a *proviso* to section 2 of the Act of 1864, which made provision for the prospective adjustments, that thereby the Act of 1866 was limited to prospective adjustments. This is not only in manifest violation of the rule of construction of provisos, which requires that the excepted cases of the proviso be excepted from the limitations of the section to which the proviso is attached, but it also makes a complete nullity of the Act of 1866. The irresistible conclusion is, that Congress is asked to erect a statute upon the basis of a totally indefensible theory of the construction of an existing statute.

If it is desirable that there shall be a review of the prospective biennial adjustments made under the Act of July 1, 1864, in those cases where a salary was allowed less than the commissions of the prior two years, without regard to the amount of commissions for the subsequent two years, a bill for that purpose ought to be framed in clear language and presented to the House for its judgment.

If Congress has not the power by an *ex-post-facto* law to rob postmasters of vested rights to compensation earned, the effect of this measure would be, not to reduce the liability of the Government, but to extend it indefinitely, by conferring rights upon other postmasters who never complained of wrong, or had any ground of complaint.

HENRY H. BINGHAM,
J. C. BURROWS,
S. R. PETERS,
RICHARD GUENTHER,
J. B. WAKEFIELD."

For a time the executive of the Post Office Department struggled on with the payment of these bounties out of the Treasury of the United States. The character of this work became more and more appalling as it went on and a *cache* was prepared in the Department into which to avoid payment a great mass of these bounty accounts were put. In that *cache* these accounts have been securely kept for a term of years. Manifestly these bounty accounts can never be restored to life unless the contention of the Postmaster-General in prosecuting this appeal suceeds.

CONCERNING THE PROFIT AND LOSS RESULTING FROM THE SUBSTITUTION OF THE SALARY ACCOUNTS OF POSTMASTERS STATED ON THE RETURNS OF ONE BIENNIAL TERM FOR THE SALARY ACCOUNTS OF POSTMASTERS STATED ON THE RETURNS OF THE SUCCEEDING BIENNIAL TERM.

If the Postmaster-General has power to veto an act of Congress, by which it is ordered that all the acounts of postmasters in the biennial terms between July 1, 1864 and July 1, 1874, which show the payment of salaries to such postmasters, ten per cent., or more, less than salary by commissions, shall be stated and paid, the profits of such veto may fairly be estimated as follows:

Such accounts, if all were presented, would aggregate about $500,000 between July 1, 1864 and July 1, 1866, and about $300,000 between July 1, 1866 and July 1, 1868, and about $1,250,000 between July 1, 1868 and July 1, 1870, and about $750,000 between July 1, 1870 and July 1, 1872, and about $500,000 between July 1, 1872 and July 1, 1874.

Thus the estimated aggregate of these deficiency salary accounts of postmasters may be stated at $3,300,000, but of course it is to be considered that a large percentage of such accounts after so many years of delay will necessarily remain unpaid perpetually. In this connection, it may be noted that on March 3, 1875 (18 Stat. p. 413), Congress appropriated and caused to be paid $300,000 to those postmasters who had suffered a loss of fifty per cent. or more of their commission salary for the one year between July 1, 1873 and July 1, 1874.

There is reported in the official register of 1865 the total pay of every postmaster and the total receipts of his office for the one year, between July 1, 1864 and July 1, 1865, and by an examination of these reports and the deficiencies in the pay of postmasters for that one year it may be fairly estimated that the debt due postmasters between July 1, 1864 and July 1, 1866, aggregates about $500,000, and the payment of every dollar of this entire debt has been nullified to the extent of the power of the Postmaster-General.

The official register of 1867 contains a like report of all postmasters for the year ending June 30, 1867, and by comparing the increase of receipts of postmasters for this one year with the receipts at the same offices for the year ending June 30, 1865, it sufficienly appears that the increase of commissions at such offices between July 1, 1866 and July 1, 1868, over the commissions at the same offices between July 1, 1864 and July 1, 1866, which by the substitution method have been denied payment by the Postmaster-General do not much exceed $300,000. A comparison has been made of a certain share of the offices listed on the official register to warrant this estimate.

The official register of 1869 shows the total receipts of postmasters in the one year ending June 30, 1869, and by comparison of a certain portion of these post offices the number of cases showing increase of receipts in that year compared with the receipts at the same offices for the year ending June 30, 1867, has been estimated and the amount of such increases has also been estimated. From these estimates it may be stated that the total of commissions of postmasters between July 1, 1868 and July 1, 1870, in excess of their paid salaries which has been denied payment by the Postmaster-General by substituting the account stated on the returns of the same offices between July 1, 1866 and July 1, 1868, for the account stated on the returns between July 1, 1868 and July 1, 1870, may be fairly estimated at $1,250,000.

In like manner by comparing the total receipts at post offices reported for the year ending June 30, 1867, in those cases in which there was a decrease in such total receipts when

compared with the total receipts reported at the same offices for the year ending June 30, 1865, it appears that the decreased commissions between July 1, 1866 and July 1, 1868, compared with the larger commissions at the same offices between July 1, 1864 and July 1, 1866, amounts to about $823,374. So that the Postmaster-General by substituting the larger commissions at these offices between 1864 and 1866, for the smaller commissions between July 1, 1866 and July 1, 1868, would distribute gratuities amounting to about this sum.

It cannot be doubted that by substituting the larger commissions at post offices between 1866 and 1868, for the smaller commissions at the same offices between 1868 and 1870, would amount at least to half the sum of the gratuities between 1866 and 1868. Neither can it be doubted that by substituting the larger commissions between 1868 and 1870, for the smaller commissions at the same offices, between 1870 and 1872, another $400,000 of gratuities would be distributed. Neither can it be doubted that by substituting the larger commissions at offices between 1870 and 1872, for the smaller commissions at the same offices between 1872 and 1874, another $400,000 of gratuities would be distributed.

Thus it appears that to complete the distribution of gratuities by the rule set on foot by the Postmaster-General, not less than $2,000,000 would be taken out of the Treasury and thrown away.

A perfect illustration of this method of squandering public money is afforded by the eight cases cited in this brief.

An examination of pages from No. 210 to No. 265 of House Executive document, No. 70, 49th Cong., first session, shows that the Postmaster-General, in the first Pennsylvania schedule of readjusted salaries of postmasters, under the statute of 1883, caused to be paid to ten hundred and fifty-nine postmasters in that State between July 1, 1866 and July 1, 1868, various sums of money in addition to the salaries originally paid them for the sole reason that the receipts returned by these postmasters in that term decreased when compared with the receipts at the same offices in the term between July 1, 1864 and July 1, 1866, and that in the term between July 1, 1868 and July 1, 1870, he caused additional payments to be made to 453 postmasters because the receipts returned by them had decreased when compared with the receipts at the same offices between July 1, 1866 and July 1, 1868, in order to make the total salary of these 453 postmasters equal to the total commissions of the postmaster at the same office in the term prior, and it also shows that he caused to be paid additional salaries to 506 postmasters in that State,

between July 1, 1870 and July 1, 1872, because their receipts fell off and were less than the receipts at the same offices in the term between July 1, 1868 and July 1, 1870, such payments having been made in order to make the total salary at each of these offices between July 1, 1870 and July 1, 1872, equal to the commissions at the same offices between July 1, 1868 and July 1, 1870, and it also shows that he caused additional salaries to be paid to 489 postmasters in that State between July 1, 1872 and July 1, 1874, because their receipts so fell off as to make the total receipts at said offices less than the receipts at the same offices for the term between July 1, 1870 and July 1, 1872. This was done by the Postmaster-General, and at the same time he denied payment to every postmaster who had applied under the act of 1883, whose receipts so increased that the salary paid was ten per cent., or more, less than his salary by commissions would be.

And in order to find authority for this strange action the Postmaster-General after General Gresham went out of office, construed General Gresham's declaration of June 9, 1883, which is in this record on page 11, and in the following words: "If in fact, there are cases in which it appeared from the quarterly returns or from sworn reports of receipts and business, that postmasters of the third, fourth and fifth class at the biennial readjustment had their salaries fixed under the act of 1864, when by an adjustment under the act of 1854 ten per cent., or more, would have been added to their salaries, then under the act of 1883, such postmasters are entitled to whatever additional sum they would and should have received under the act of 1854," to mean that no postmaster of the classes stated shall have any additional pay, however great the deficiency of salary paid under the act of 1864, when compared with the salary he would have received under the act of 1854, may be, but that postmasters in whose salary under the act of 1864, when compared with what would have been received under the act of 1854 shows no deficiency whatever, should be paid bounties.

He also construes the declaration of Postmaster-General Gresham published throughout the country, on February 17, 1884, which is in this record at the bottom of page 11, "That in all cases in which it appears from the biennial adjustment of salaries of postmasters of the third, fourth and fifth classes that they received ten per cent., or more, less than they would have received in commissions under the act of 1854, they are now entitled under the act of March 3, 1883, to the difference between what was paid them and what they would receive as commissions under the act of 1854," to mean that no postmaster shall receive anything in addition to his

original pay, no matter how great the deficiency in his salary under the act of 1864, when compared with what he would receive under the act of 1854, may be, but that bounties shall be paid to those postmasters in many thousands of cases, who were paid under the act of 1864, as much as they would receive under the act of 1854.

The successor of General Greshem also cites as authority for the payment of bounties to one set of postmasters, and the denial of payment of deficiencies in the salaries of other postmasters, the opinion of Attorney-General Brewster, of February 13, 1884, which is printed on pages 9 to 14 of Senate Report, No. 2410, 50th Cong., 2d Session. In that opinion at the bottom of page 13 of that report the Attorney-General made the following statement: "Congress did not intend, in substituting the salary for the commission system, to give postmasters an exact equivalent of their earnings under the latter plan. It deliberately provided a scheme by which the salary should never exceed the commission standard, and would ordinarily be less by a difference extending to the limit of ten per cent." The system adopted by the successor of General Gresham, undertook to pay $2,000,000 in excess of the commissions to many thousands of postmasters, and it undertook to deny any payment to thousands of other postmasters whose salaries paid under the act of 1864, were from ten to ninety per cent. below the commission standard.

It is a public and well-known fact, reported in the official registers, between 1864 and 1874, that the Postmaster-General at the beginning of every biennial term readjusted the salary of every postmaster in the United States, but the Attorney-General in face of this well-known public fact used the following language:

"That act in June 1866, was about to be or was being put into operation for the first time as respected readjustments; and the Postmaster-General on the one hand and the postmasters on the other were concerned in its mandatory provisions, the former because he was required to readjust (according to the first section), every postmaster's salary in a schedule of (at that time), more than 29,000 offices—a task manifestly of great magnitude which had not theretofore been assigned to the Post Office Department, and which would of necessity add greatly to the labor and responsibility imposed upon it; the latter because they were for the first time graded in classes under novel regulations affecting their relations towards one another as well as to the Government.

"The amendment would evidently be a measure of relief to the Postmaster-General and his Department since it would save the labor of actual readjustment in many (probably a

large majority), of the cases, in which it would be determined by mere inspection that it was not required."

Thus, the Attorney-General held that all of the thousands of readjustments of postmasters' salaries biennially between 1864 and 1874, by which reductions of salaries were effected on decreased receipts, were made in violation of law. How many millions of dollars would be required to make this view of the law by the Attorney-General good by the return of the amount of the reduction of salaries unlawfully made?

A POSTMASTER'S SALARY IS A SUM CERTAIN FIXED BY LAW OR ACCORDING TO LAW.

No executive officer has power to control or obstruct the payment of any salary of any postmaster when the same has been determined according to law.

As has been shown, before 1864, the compensation of postmasters was not by annual salaries but by quarterly payments. Between 1833 and 1864, by this method postmasters were paid in the aggregate about $50,000,000, and as to the amount of pay in each case no officer had lawful power to deviate a cent from the law or to vary the amount of said compensation in the credit to the postmaster to the extent of one cent. In the $350,000,000 or more paid to postmasters since 1874, no officer had lawful power to deviate one cent in the credit given to any postmaster. The officers who supervised these credits were themselves supervised and controlled by the expressed provisions of law. Every unpaid salary of a postmaster is within the jurisdiction of the Court of Claims because the payment of that salary is required by a contract made by Congress and not by a contract made by the Postmaster-General.

When in January, 1878, in 95 U. S., page 97, this Court held as that decision is understood, in effect that the power and action of the Postmaster-General in fixing, under the statute of 1864, upon conjectural bases, the salaries of postmasters was supreme and not reviewable by the Court of Claims, what seemed to be an infatuation as to the power of the Postmaster-General seemed to prevail in the Post Office Department. The fact that there never was but one law so framed that no contract contained in it could be perfected in any way except by the executive act of the Postmaster-General in guessing at and fixing salaries of postmasters for terms in the future at the date they were fixed, seemed to be entirely forgotten and superseded by what seemed to be an assumption that the Postmaster-General had supreme authority to deny or allow to

postmasters salaries in amount as should please him. It is true that the Postmaster-General disregarding the regulations of 1866 and the statute of 1866, had and exercised this supreme power over the salaries of postmasters from 1864 to 1874, but he never had any like power before 1864, nor since 1874. The reason that enabled him to exercise that power between 1864 and 1874, was that the contract of 1864 was to pay postmasters guessed at salaries, or salaries estimated by the Postmaster-General, once in two years in advance of the term for which they were to be paid, and as much more frequently as he deemed necessary to maintain salaries of postmasters on the basis of commissions provided for by the statute of 1854. This being the contract of 1864, when the Postmaster-General by deliberate violation of postal regulations of 1866, and disregard of the statute of 1866, deprived postmasters, between 1864 and 1874, of about $4,000,000 of their earnings, the contract statute of 1864 afforded no remedy for this monstrous wrong inflicted upon the postmasters. Tested by the postal regulations of March 1, 1866, and by the statute of June 12, 1866, every dollar of the $4,000,000, said by the Solicitor General to be involved in the decision of this case, was taken from the postmasters by the maladministration of the regulations and law by the Postmaster-General. It seems by the decision of this Court, in 95 U. S., that the statute of 1864, was so defective that it permitted this maladministration by which the postmasters lost $4,000,000 of their earnings and afforded no remedy. This defect of the statute of 1864 was so marked that it was repealed in 1874, and a statute was enacted in its place so framed that the Postmaster-General had no power to guess away or take from any postmaster a dollar of his earnings. And solely because this alleged $4,000,000 earned by postmasters between 1864 and 1874, had been taken from them by the Postmaster-General, Congress, in 1883, ordered a conputation and statement of the losses thus sustained by the postmasters to be made in order that the same be paid to them. During the whole time the Postmaster-General was engaged in stating accounts he knew it to be impossible for Congress under such circumstances to enact a statute in 1883, authorizing him to so manipulate these accounts as to prevent payment of any part of his salary by commissions in any case where the salary originally paid was ten per cent., or more, less than the salary by commissions. He knew it to be impossible for Congress by statute in 1883, to authorize payments of gratuities to any postmaster who served between 1864 and 1874. Knowing this he publicly declared throughout the United States from June 9, 1883 to 1888, the statute of 1883 to be a contract to state and pay salary ac-

counts of postmasters on all the returns within a bienni
term on the basis of commissions provided by the act of 185
in all the cases where the salary paid was ten per cent. less th
the salary by commissions. If it be true as supposed by t
Solicitor-General that this case in the application of its d
cision to the salaries of postmasters all over the country i
volves an estimated aggregate sum of $4,000,000 it follow
that in the maladministration of the statute of 1883, and
contempt of the public orders of the Postmaster-Gener
cited, there has been withheld by force from postmaste
whose stated acounts show that they were paid salaries te
per centum less than salaries by commissions, an aggrega
sum estimated at $4,000,000.

The sole purpose of the statute of 1883, as shown by its ow
terms is to change by increase the salaries of certain pos
masters and to pay such increase of salaries. By this statu
this change by increase was not to be made by estimates f
future terms, but solely by statement of accounts on the r
turns for past terms of service. The conditions as to salari
of postmasters affected by this law between 1864 and 187
were the reverse of the conditions as to such salaries whi
existed when the statutes of 1864 and 1866 were enacted,
this, namely: The statutes of 1864 and 1866, were solely
fix salaries of postmasters for future terms without whi
there could be no salaries of postmasters at all. In 1883
such condition existed. The conditions in 1883 required t
change by increase of the salaries fixed and paid under t
statutes of 1864 and 1866 in certain cases. From 1864 to 18
there could be no adjustment of a postmaster's salary e
cept such as ended the term of the salary by a prior prospe
tive adjustment, by substituting for a succeeding futu
term, a new prospective adjustment. In 1883 t
rule of adjustments of salaries of postmasters, und
the statute of 1864 and 1866, was obsolete, su
adjustments having been ended by statute in 187
The rule of the statute of 1864 and 1866 could only exi
as to salaries of postmasters requiring to be fixed for futu
terms, and by the terms of those statutes any salary fixed f
a future term was continually under the supervision and co
trol of the Postmaster-General to be ended by him at any tim
by the substitution of a different salary. By the rule of t
statute of 1864, there was continual uncertainty from the b
ginning of a biennial term when the adjustment was made
the end of that term as to what the total pay of the postma
ter would be in that term, and this uncertainty could only en
when the entire action of the Postmaster-General, throug
out the whole term, was complete. Under such a state

the law there could be no effective remedial legislation until the control of the Postmaster-General over such salaries passed away. The control of the Postmaster-General over all salaries paid to postmasters between 1864 and 1874 passed away in 1874. There was no power anywhere after July 1, 1874, to change the salary of any postmaster by increase who had served between 1864 and 1874, outside of the law-making power. The power asserted by Congress in the statute of 1883 is the power to change salaries by increase of certain postmasters in spite of the power asserted by the Postmaster-General, between 1864 and 1874, to prevent such changes. In the very nature of the case the statute of 1883 made the Postmaster-General a mere clerk to effect the changes ordered by Congress. It would be absurd to attempt to create in the Postmaster-General by authority of the act of 1883, any such power as he had and exercised over the salaries of postmasters under the statute of 1864. It is plain that the statute of 1883 is an order of Congress to change salaries of postmasters between 1864 and 1874, by increase thereof, in those cases in which the Postmaster-General under the statute of 1864 accorded to the postmasters salaries which were ten per cent., or more, less than they would be by commissions. Can there be a more glaring attempt to nullify a law of Congress than to invent a method of stating salary accounts of postmasters which would defeat the very thing ordered in the body of that statute, namely; to change salaries by increase in those cases where the salaries were awarded by the Postmaster-General, which are ten per cent., or more, less than salaries by commissions. Let it be considered for a moment that the conditions which required the enactment of the staute of 1883 were created by the Postmaster-General through the use of his executive power by which he had reduced the pay of thousands of postmasters far below their just earnings, and below what was by law intended to be paid them. For this reason alone Congress by the statute of 1883, ordered an increase of all such salaries when applied for. There was absolutely no measure in existence of the increased salaries ordered except the statute of 1854. The returns of all such postmasters were registered in the office of the Postmaster-General with the amount of every salary paid thereon. Having respect for the statute of 1883, it was impossible for the Postmaster-General to exercise any power except to state the credit accounts on the postmaster's registered returns and to state against such credit accounts the sum of the salary paid thereon for the term and to report such acounts when thus stated. In most cases the salaries of United States officers are certain as to amount because fixed by law. In other cases they are certain because

fixed acording to law upon records of official duties performed by them. The salary of no postmaster who served between 1864 and 1874 could be changed at all except by a stated credit account larger by ten per cent., or more than the salary awarded by the Postmaster-General. And this credit account in every case had to be stated on the registered returns for a full biennial term. And no such credit accounts could be stated at all except by the rule of compensation of postmasters embodied in the statute of 1854. In every one of the thousands of such accounts stated by the Postmaster-General the increased salary of the postmaster as to amount is an absolute certainty.

In Stockwell, et al *vs.* the U. S. (80 U. S. 531), this Court said:

"It cannot be that whether an action of debt is maintainable or not, depends upon the question who is the plaintiff? Debt lies whenever a sum certain is due to the plaintiff or a sum which can readily be reduced to a certaintly—a sum requiring no future valuation to settle the amount. It is immaterial in what manner the obligation was incurred or by what it is evidenced if the sum owing is capable of being definitely ascertained."

Having some bearing on this question this Court (in 98 U. S. 179, 186, McKnight et al *vs.* U. S.), says: "With a few exceptions growing out of public policy, the rules of law which apply to the Government and to individuals are the same. There is not one law for the former and another for the latter."

It can hardly be as to the great army of officers who have served the United States Government that as to any considerable number there can be any uncertainty as to the compensation due them for their service. It certainly must be a very exceptional case in which uncertainty as to the pay of an officer can be so great that he cannot in the case of non-payment enforce payment of the same by suit.

It is, and always has been, the policy of the law to make the pay of all officers of the United States certain, or such that the amounts can readily be reduced to a certainty.

In 144 U. S., in the case of the United States *vs.* Wilson, pp. 24 to 28, upon the question of the right of a postmaster to sue for his unpaid salary where an executive officer refused payment, after reciting the method of the law by which the compensation of postmasters was determined, this Court used the following language: "All this was in exact conformity to the letter of the statute of 1883. The gross receipts of the office for the four quarters ending July, 1886, were more than $4,200, and less than $5,000; consequently *the statute fixed* the salary of a postmaster at $1,600 per year. By section 3 of the

the change made in the salaries could not take effect until first day of the quarter next following the order. The t quarter commenced October 1, 1886. Thus it was that order of the First Assistant Postmaster-General desig-ed October 1, 1886, as the day when it should go into opera-. The statute was then fulfilled. Its terms had been car- out. The office had been properly changed to one of the d class, and the salaries of postmasters had been changed neet the mandate of the law. Whoever was then perform-the duties of postmaster at that office became entitled to salaries thus fixed. It matters not that the President did commission a third class postmaster at that office until e months thereafter. The President had nothing to do h the salary attached to the office. That had been fixed olutely by the Postmaster-General, under the express ctions of a law of Congress. Neither could the salary of postmaster be affected by any subsequent order of the h Auditor, as was attempted to be done in this case; for already stated, his duty and authority in the premises sed when he made his report of the business transactions he office to the Postmaster-General. The whole theory of act of 1883 is that every postmaster shall receive a salary endent upon and regulated by the amount of business e at his office. The intent of the statute in this respect ap-rs so plain upon a careful reading of it that it is difficult elucidate it by argument or illustration. The mere state-nt of its terms is the best argument in favor of the conclu-n we have reached."

here is another postmaster compensation case in 149 U. S. 278 to 387.

n this case the Postmaster-General had decreed the pay n postmaster less than the pay prescribed by the statute n the grounds that the postmaster had committed fraud. s action was had by the Postmaster-General under the of June 17, 1878, giving the Postmaster-General discre-n to deprive a postmaster of his commissions prescribed by and award him such compensation as he might deem per. In that case this Court held that such deprivation s a mere suspension of the pay prescribed by law, and that ess the fact of fraud and the amount of loss to the Gov-ment by the fraud alleged was established, the postmas-had a right to the exact amount of compensation pre-bed by law. In the decision of this case a quotation was de from the decision of the Court by Mr. Justice Fields in case of the United States *vs.* Barlow, 132 U. S., pp. 271, , as follows: "We admit that where matters appertaining the postal service are left to the discretion and judgment

of the Postmaster-General, the exercise of that judgment and discretion cannot in general be interfered with, and the results following defeated. But their rule proposes that information upon the matters upon which the judgment and discretion are invoked is presented to the officer for consideration, or knowledge respecting them is possessed by him. He is not at liberty, any more than a private agent, to act upon mere guesses and surmises, without informaton or knowledge on the subject." The conclusion of this Court in that case was stated by Judge Jackson as follows:

"Our conclusion is that the order of the Postmaster-General and the certified acounts produced by the Government in the present case were only prima facie evidence of the balance claimed against the defendants in error, and that there was no error in the Court below in so holding; and the judgment is accordingly affirmed."

In the foregoing case the law as to the compensation of the postmaster prevailed over the power of the Postmaster-General, which power he had also exercised under another statute.

Plainly, the statute of 1883 permits no uncertainty whatever as to the pay of postmasters within that statute for as stated it was solely because of the uncertainty as to the pay of postmasters between 1864 and 1874, created by the Postmaster-General in the postal regulations and by his administration of the regulations and the law that compelled Congress to remove that uncertainty by the enactment of the statute of 1883. The record shows to the Court that the Postmaster-General knew that he was required to reduce to a certainty from the registered returns of the claimant the amount of the claimant's compensation by commissions in each of his four biennial terms of service. When the Postmaster-General had done this, how is it possible for him to create any uncertainty as to the compensation the statute ordered to be paid to the claimant? It is very plain from the history of these cases of the action of the Postmaster-General that he was conscious of the fact that there was absolutely no uncertainty whatever upon this point. If he was in ignorance upon this point why did he conceal from the Congress of the United States and the Court of Claims for a term of years the four certain acounts which he had stated from the registered returns of the claimant in exact conformity to the requirement of the law as he had published that requirement throughout the United States? In any view of the case there is absolutely no uncertainty whatever about the compensation ordered by statute to be paid to the claimant, for no defense whatever is offered to the Court in prosecuting this appeal

on the score of any uncertainty as to the correctness of these accounts. Curiously enough, the defense here is that the Postmaster-General was directed by law to ignore the salary account stated in the first term, and was at the same time authorized to ignore the salary account stated in the second term and to substitute by transposition of the salary account stated in the first term for the salary account stated in the second term and the salary account stated in the second term for the salary account stated in the third term, and the salary account stated in the third term for the salary account stated in the fourth term. If this transposition of certain stated salary accounts of postmasters be law and if the Postmaster-General believes it to be law, why has he refused to report for payment some thousands of these transposed salary accounts?

He has been requested in numerous letters to report for payment some thousands of these transposed accounts. The following is a copy of the last letter addressed to him upon this subject:

"Washington, D. C., Aug. 6, 1898.

"Hon. Chas. Emory Smith, Postmaster-General.

Sir: I hereby submit to you personally 62 cases of restated salary accounts of postmasters in the State of Wisconsin, under the act of March 3, 1883, by the rule declared by the Postmaster-General publicly and continuously in recent years to be the law. This rule commands each salary of each postmaster to be restated not upon the commissions of the term for which the restatement is made, but upon the basis of the commissions on the next preceding term. The cases now submitted specify the name of the post office, the name of the postmaster and the term in which a part of the salary due is unpaid by this rule, and the amount of the salary unpaid is approximately stated in each case. The date of application for readjustment of salary, prior to January 1, 1887, is also stated. In each case the claimant has heretofore been deprived of the debt due by a violation of the law and the rule as laid down by the Postmaster-General himself. The cases are specifically brought to your knowledge personally in order that this claim and unprecedented violation of the law may be ended by a report of each case for payment in execution of the Postmaster-General's own rule.

"Respectfully,

(Signed) "HARVEY SPALDING."

All these letters unanswered sleep with these unpaid accounts in a secure place in the Department.

There are two expressions used by this Court in the Wilson case which seem to apply to this case and to every other case in which the pay of a postmaster is involved, namely: "The

statute fixed the salary," and the salary "had been fixed absolutely by the Postmaster-General under the expressed directions of a law of Congress." So in this case the claimant's salary was "fixed absolutely by the Postmaster-General under the expressed directions of a law of Congress," at $531.90 in the first term; at $1,015 in the second term; at $1,179.67 in the third term, and at $1,311.16 in the fourth term.

If this was not so then the Postmaster-General in stating these accounts violated a law of Congress, for he had no authority whatever to state these accounts as he did unless it was under the express directions of that law of Congress. Having stated these salaries under the expressed directions of a law of Congress, the Postmaster-General had no power to substitute the salary of the first term for the salary of the second term and the salary of the second term for the salary of the third term, and the salary of the third term for the salary of the fourth term "unless under the express directions of a law of Congress." If he had such expressed directions under a law of Congress, it is conclusive of the law as to thousands of like cases which have been "cached" in the Department and not paid. If he had such expressed directions of a law of Congress there can be no doubt that that law will be discovered and pointed out to this Court in the proceedings before this Court, and that thereby these "cached" salary accounts of postmasters will be resurrected and paid, for it is undeniable that if this transposition of salary accounts of postmasters be law the results of such transpositions are absolute certainties as to amounts due. But if the law of Congress, in which the expressed directions to transpose these salary accounts is alleged to be, shall not be pointed out the question involved reverts to the statute which expressly directed the salary accounts of the claimant to be stated as they appear in the record.

On pages 15, 16 and 17 of the record it is shown that in response to a call of the Senate of the United States, the Postmaster-General early in 1890, transmitted to the Senate schedules of the readjusted unpaid salaries of postmasters in four States. In fact, the claimant's readjusted salaries were stated on one of these schedules. But before the money could be provided by Congress to pay these readjusted salaries, and on September 30, 1890, these schedules were withdrawn from the Senate by the Postmaster-General.

If the Postmaster-General believed that the readjusted salaries of 16,523 postmasters whose claims are in the Court of Claims, stated by the one rule as applied to this case to be not debts due and payable of certain ascertained fixed sums as ordered by law, why has he during many years kept

"cached" in the Department these thousands of salary accounts of postmasters?

If he believes that by law these stated salary accounts are neuturalized and are, therefore, no evidence of debts due and payable to the postmasters because the law commands the transposition of such credit accounts from one term to the succeeding term, and that the resulting debts due and payable are only such as are shown by the excess of the resulting credit by transposition over the salary paid in the term to which the transferred credit is carried, why does he keep under cover thousands of these unpaid credits? If he believes that accounts are so stated because the law commands it to be done is it not obvious that he seeks to nullify the law containing that command?

If the law be as it is assumed to be by the prosecution of this appeal, is it not an attempted fraud on the law to suppress reports in some thousands of accounts in which there has been a transposition of credits from one term to another?

If the law be as it was reported to be by the Postmaster-General on pages 9 to 12 of this record, is it not an attempted fraud on the law to keep under cover all the thousands of accounts represented by the claimant's account at the bottom of page 16 of this record?

The following is an extract from Senate Report, No. 1611, unanimously reported by the Senate Committee on Claims on June 2, 1900:

"The Committee believes that any action to prevent the payment of these deficiencies where applications were made to the Postmaster-General within the time limited by law, by refusing to state the accounts showing the existence and amount of the deficiencies or by refusing to report the accounts after statement which showed the existence and amount of the deficiency, to be in fraud of the statute of 1883."

BY AUTHORITY OF TWO DECISIONS OF THIS COURT IT MAY BE AFFIRMED AS IS BELIEVED THAT THE STATUTE OF 1883 IN EVERY READJUSTMENT OF A POSTMASTER'S SALARY MADE BY THE POSTMASTER-GENERAL DETERMINED WITH ABSOLUTE CERTAINTY THE POSTMASTER'S SALARY.

In the case of The United States, appellant, *vs.* Wm. J. Verdier, admr. of James R. Verdier, decd. (164 U. S. 213), this Court used the following language:

"It was not till 1883 that the Postmaster-General was authorized to readjust the compensation of postmasters and to make such readjustment retrospective.

"By the act of 1883 no readjustment could be made except upon the application of the postmaster, and when the appli-

cation was made in this case the salary for the first time was readjusted. Until this time the debt was not liquidated—in fact, it would be more accurate to say that it did not exist. * * *

"Upon the other hand, the Government did not become indebted to Verdier until his claim was liquidated."

As is known, this Court in the case of the United States, appt. *vs.* J. K. McLean, 95 U. S. 750 to 753, decided that the Court of Claims could not perform the duty of readjusting the salary under the acts of 1864 and 1866, and after the act of 1883 was passed this Court held in the case of the U. S. ex rel J. K. McLean, *vs.* Wm. F. Vilas, Postmaster-General in 124 U. S. 86 to 97, as follows:

"Upon a very careful examination of these statutes we are forced to the conclusion that the legislature in these enactments did not contemplate any readjustment of the salaries of any of these officers oftener than once in two years, as a legal duty or obligation upon the part of the Postmaster-General." "Acting upon this suggestion, and under the act of Congress of March 3, 1883, which authorized and directed the Postmaster-General, in proper cases, to make readjustments of salaries which should act retrospectively, Mr. McLean made," etc. In this connection it ought to be noted, perhaps, that in the Verdier case this Court said that it was not till 1883 that the Postmaster-General was authorized to readjust the compensation of postmasters and to make, etc., and that the language quoted from the case in 124 U. S. speaks of a readjustment of the salaries of *officers*. These expressions of this Court clearly make the proper distinction with reference to the meaning of readjustments of the salaries of *postmasters* and the readjustments of salaries *at post offices* provided for by the act of 1864. This is understood to mean that this Court holds in the Verdier case that a readjustment of the salary of a postmaster—that is, a change of a paid salary of a postmaster, was not authorized till 1883.

As the statute of 1864 made obligatory upon the Postmaster-General prospective readjustments of salaries once in two years as to all postmasters the decision of this Court in 124 U. S. quoted, limited and fixed absolutely the statute of 1883 to change of salaries of postmasters by retrospective readjustment of salaries for biennial terms of service.

It is in this view of the case no doubt that this Court in the Verdier case in 164 U. S. 213, used the following language:

"Nor is it strictly true to say that the Government was indebted to Verdier at the date of this judgment against him. He had performed service for which an indebtedness was subsequently *voluntarily created* by the Government, but until the

readjustment was made the law imposed no obligation upon the Government to pay him an increase salary. Verdier could not have availed himself of it as a counter claim to his own debt to the Government, and in fact, it never became a debt until the claim was liquidated under the act of 1883."

The following is also quoted from the Verdier decision:

"Verdier's claim for interest in this case is based upon the assumption that the Postmaster-General neglected his duty in failing to readjust his salary. We have shown that if he had performed his statutory duty his action would have been prospective only and would have covered but comparatively a short period of Verdier's service."

From this it seems clear that this Court has decided that the statute of 1883 created a debt due and payable through a retrospective biennial readjustment of salaries of postmasters in those cases where the prospective adjustment deprived postmasters of ten per cent., or more of the pay they would have received under the act of 1854, and that this was not authorized by any prior statute.

As a biennial prospective adjustment of salaries of postmasters was provided for by the act of 1864, it is established by the decisions of this Court that the readjustment provided for by the act of 1883, was the reverse as to its method and character of the biennial adjustment provided for by the act of 1864, because this Court holds that where the readjustment provided for by the statute of 1864 created no debt the readjustment provided for by the statute of 1883, in respect to every case included within its terms, created a debt for the first time.

Manifestly by authority of this Court every readjustment of a postmaster's salary under the act of 1883 was a retrospective readjustment, and that the statute of 1883 through each retrospective readjustment ordered by that act created a certain specific debt due and payable. There could be no retrospective readjustment of the salary of any postmaster whose claim was within the act of 1883 which did not liquidate and make absolutely certain and remove every uncertainty that existed before that readjustment with reference to his claim against the Government.

The decisions of this Court referred to describe and define as is understood the debt created by the statute of 1883 as the difference between two salaries of a postmaster, the one created by the act of 1864 by a prospective adjustment, and the other created by the act of 1883, by retrospective readjustment. And the debt thus liquidated exists only in those cases where the salary created by a prospective adjustment is ten per cent., or more, less than the salaries created by a retrospective read-

justment. Thus, this question has been decided by this Court and by Postmaster-General Gresham whose decisions are in this record in the same way and with the same limitation for General Gresham held that no readjustment of salary of a postmaster was authorized by the act of 1883 to be made from quarter to quarter or for a less period than a biennial term, and this Court so decided in 124 U. S.

In the proviso of Chapter 119 of the laws of 1883, Congress made the following order:

"That every readjustment of salary under this act shall be upon a written application signed by the postmaster or late postmaster or legal representative entitled to said readjustment; and that each payment made shall be by warrant or check on the Treasurer, or some assistant Treasurer, of the United States, etc."

In this legislation Congress ordered the creation of salaries by increase above the salaries originally created and paid and ordered payment of the same and prescribed the method of payment.

Congress never used such language except as to debts made certain by law as to amounts. Under this legislation for the Postmaster-General to attempt to render uncertain and to convert debts certain into claims of uncertain amount is to attempt a deliberate violation of law and to pervert his lawful power to faithfully execute the laws to defeat and prevent the execution of the laws.

"Salary" as used in this statute means, of course, a recompense for official duties performed by the postmasters. The "salary" described in this statute is no uncertain sum of money. Its payment could not be ordered by Congress in this statute if Congress had not decreed certainty as to the amount of such salaries at the same time that *payment* was ordered.

*Payment* is "the fulfillment of a promise, or the performance of an agreement."

Congress enacted "that each payment made shall be by warrant or check on the Treasury, etc."

Can there be a greater or more conspicuous act of executive treachery than to attempt to defeat payment promised and agreed by Congress to be made of salaries to certain postmasters for official duties performed?

It seems plain that the payments of debts to postmasters ordered by the statute of 1883 to be paid, as to which applications were made to the Postmaster-General prior to Jan. 1, 1887, can only be prevented by one or the other of two methods: First, by a denial by the Postmaster-General that the readjustments ordered by Congress in order to effect pay-

ment, have been made. Second, by a suppression of reports of the readjusted salaries. Either of these defenses, if made, would in effect be that the Government of the United States relies upon a fraud upon the law by their agent, the Postmaster-General, to defeat the entry of judgments for the amount of debts due.

In the case before the Court the Postmaster-General after seventeen years of continuous persuasion consented that the four readjusted salaries of the claimant in the four biennial terms between July 1, 1866 and June 30, 1874, ordered by Congress to be paid by warrants or checks on the Treasurer of the United States should be passed upon by the Court of Claims.

These four readjusted salaries of the claimant aggregate $4,037.73, which sum is reduced by prior payments to $1,264.83, and for this sum the Court of Claims entered a judgment against the United States.

It is submitted that the entry of this judgment by the Court of Claims is plainly without error and in accordance with the plain mandate of Congress, and ought, therefore, to be affirmed by this Court.

HARVEY SPALDING,
Attorney for the Claimant.

Washington, D. C., April 26, 1901.